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'Moral decision' jeopardizes Navy lawyer's career 📰

Officer says he leaked list of terror suspects in the name of justice; now convicted, he could face prison term

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By **BROOKS EGERTON** / The Dallas Morning News
begerton@dallasnews.com

NORFOLK, Va. – Matt Diaz was a Navy lawyer with 18 years of military experience when duty called at Guantánamo Bay, Cuba. Six months there broke him.

Now, in a case that reflects the fierce dissent within the U.S. government over the war on terrorism, the lieutenant commander faces a court-martial that could send him to prison for at least 14 years. A jury convicted him late Thursday, and the sentencing phase of the case is set to begin Friday.



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Navy officer Matt Diaz put his career on the line when he disclosed the names of Guantanamo Bay detainees to a civil liberties group.

Cmdr. Diaz is on trial because of actions he took after concluding – as many of higher rank have – that the Bush administration's offshore detention camp for terrorism suspects was making a mockery of American justice.

"My oath as a commissioned officer is to the Constitution of the United States," Cmdr. Diaz told *The Dallas Morning News* in his first public comments on the case. "I'm not a criminal."

In early 2005, as he was concluding a six-month tour of duty as a Guantánamo legal adviser, Cmdr. Diaz

sent an anonymous note to a New York civil liberties group containing the names of the detainees.

The Center for Constitutional Rights earlier had won a U.S. Supreme Court ruling that terrorism suspects had the right to challenge their detention. But the Pentagon was refusing to identify the men, hampering the group's effort to represent them.

"I had observed the stonewalling, the obstacles we continued to place in the way of the attorneys," the 41-year-old officer said. "I knew my time was limited. ... I had to do something."

In doing so, the government contends, Cmdr. Diaz committed a variety of crimes, including disobeying regulations and transmitting secret defense information that "could be used to the injury of the United States or to the advantage of a foreign nation." The jury convicted him on four of five counts.

Prosecutors have declined to comment on the case. But in court, they have argued that some of the released material could have led to discovery of "intelligence sources and methods."

Defense attorneys have tried to raise doubt about whether the leaked material really was classified.

Patrick McLain, an ex-Marine and military law expert from Dallas who is leading the Diaz defense team, predicted the government wouldn't convince the seven-man jury on the one point that could bring a long prison term: that his client deliberately endangered national security.

Here, "the government's case is circumstantial," he said.

Onus on government

The judge has barred the defense from explaining its client's motives, and Cmdr. Diaz did not testify during the trial's guilt-innocence phase.

But in an hourlong interview after the opening day of trial Monday, Cmdr. Diaz laid out his reasoning.

What is illegal, he said, is the Bush administration's prosecution of the war on terror. He accused officials of violating international law, such as the Geneva Conventions on the humane treatment of war prisoners, and the Constitution's guarantee of due process.

"I made a stupid decision, I know, but I felt it was the right decision, the moral decision, the decision that was required by international law," Cmdr. Diaz said. "No matter how the conflict was identified, we were to treat them in accordance with Geneva, and it just wasn't being done."

The Defense Department strenuously rejects such talk.

"Detention of enemy combatants in wartime is not criminal punishment and therefore does not require that the individual be charged or tried in a court of law," Daniel Dell'Orto, a top Pentagon lawyer, testified recently before the Senate Armed Services Committee. "It is a matter of security and military necessity that has long been recognized as legitimate under international law."

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Timeline

2002:

- The U.S. military establishes a detention camp at Guantanamo Bay, Cuba, for terrorism suspects captured abroad after the Sept. 11 attacks. Hundreds are held incommunicado, without charge or legal counsel.
- The Center for Constitutional Rights, a legal and human

Nonetheless, Defense Secretary Robert Gates and Secretary of State Condoleezza Rice have quietly recommended that President Bush close Guantánamo, according to *The New York Times*.

Prominent ex-military men also are publicly urging reform.

"The way we have dealt with detainees risks blemishing the reputation of this great country for generations to come," retired Rear Adm. John Hutson testified before the Senate panel.

A card with 550 names

The case against Cmdr. Diaz began in 2005 shortly after Barbara Olshansky, a lawyer at the Center for Constitutional Rights, received a Valentine's Day card, bearing the picture of a long-eared, droopy-eyed dog and a Guantánamo postmark.

Inside were computer printouts, reduced to fit the card, containing the names and other identifying information on the approximately 550 detainees then at Guantánamo. Cmdr. Diaz said he took these steps to lessen the chance that the material would be intercepted by the military before it left the island.

Ms. Olshansky had never communicated with the commander, according to testimony, but suspected that she had received the names she'd been seeking through official channels. Court officials overseeing the center's Guantánamo litigation verified her suspicions and alerted the FBI.

Fingerprints and computer sleuthing eventually led to Cmdr. Diaz in Florida, where his next assignment had taken him.

While the investigation was unfolding, much identifying information about the detainees became public – but not because of the center's continuing litigation. Instead, The Associated Press won a Freedom of Information Act lawsuit against the government when a U.S. district judge ruled that the Guantánamo prisoners' names were public.

When asked why the government pressed on with its criminal case against Cmdr. Diaz, Navy spokeswoman Beth Baker said, "I can't give you a philosophical answer." But she stressed that the allegations against him constituted "an offense in the Uniform Code of Military Justice."

Cmdr. Diaz said he now believes it was "cowardly" to release the names and other identifying information the way he did.

rights advocacy group in New York, files suit challenging the detention of three prisoners at Guantanamo. Lower courts rule the prisoners have no right to pursue legal action.

2004:

- The U.S. Supreme Court rules for the Center, saying that the prisoners do have the right to challenge their detention in U.S. courts.
- Defense lawyers not associated with the Center challenge the constitutionality of military proceedings that decide - without following U.S. civilian court standards - whether prisoners are enemy combatants or have committed war crimes. The lawyers represent Salim Hamdan, who worked as a driver for Osama bin Laden in Afghanistan but denies fighting or being a member of al Qaeda.
- Navy Lt. Commander Matthew Diaz is assigned to the Guantanamo legal affairs office. Part of his job is to coordinate visits by defense attorneys.
- The Center seeks the names of all the Guantanamo detainees. The Pentagon refuses.

2005:

Commander Diaz anonymously mails the names of Guantanamo prisoners to Barbara Olshansky, a Center lawyer. She consults with court officials overseeing Center litigation. Concerned about the possible ramifications of having illegally obtained the names, the Center alerts the FBI, which eventually focuses on

"I was more concerned about damaging my career," said the high school dropout, who got his GED and law degree while in the military. "Obviously I chose the wrong path because here I am – my career is in jeopardy, serious jeopardy, much more serious jeopardy than it would have been if I had raised the issue to my chain of command."

Others fought system

Cmdr. Diaz is not the first member of the military legal system to face trouble for challenging conditions at Guantánamo.

In his interview with *The News*, he recalled two prosecutors who "objected to the way the system was set up to guarantee a conviction. I don't believe they lasted long ... they didn't make it to the first hearings."

One of the best-known Guantánamo rebels is another Navy lieutenant commander, Charles Swift.

He was assigned to represent Salim Hamdan, who admitted working as Osama bin Laden's driver while in Afghanistan but denied fighting or being an al-Qaeda member. Cmdr. Swift alleged that prosecutors told him he couldn't get access to his client unless he agreed in advance to negotiate a guilty plea for him.

Cmdr. Swift refused and sued the government, resulting in the landmark 2006 U.S. Supreme Court decision that threw out the Guantánamo military tribunal system.

"The environment at Guantánamo is poisonous," Cmdr. Swift told *The News*. "I've watched colleagues and people who are close friends, people I have the utmost respect for, just ground down by this."

He counts Matt Diaz among them. The two shared some military legal training, and he worked with Cmdr. Diaz to coordinate his visits with Mr. Hamdan.

"I am struck somewhat that I'm a hero and Matt is facing jail," Cmdr. Swift said, noting that he's not familiar with the specifics of the Diaz case. "If a mistake was made, it doesn't take this."

Another casualty of the Guantánamo system is that criminal cases may collapse. Marine Lt. Col. Stuart Couch, for example, recently told *The Wall Street Journal* that he had given up on prosecuting a prisoner he believed had strong ties to 9/11 after concluding that the man had been tortured.

Such big fish are rare in the detention camp, according to research by Seton Hall Law School. It concluded, based on government documents obtained in litigation, that about half the detainees were noncombatants.

Diaz as the leaker.

- Congress passes a law barring Guantanamo prisoners from challenging their detention.

2006:

- A U.S. district judge rules that the Guantanamo prisoners' names are public, as The Associated Press argued in a Freedom of Information Act suit.
- The Navy proceeds with its prosecution of Commander Diaz.
- The U.S. Supreme Court rules in the Hamdan case that the system of military proceedings is unconstitutional. Congress creates a new system.

2007:

- The first war-crimes prosecution at Guantanamo is completed. Australian David Hicks pleads guilty to aiding terrorists in Afghanistan in exchange for a nine-month sentence, to be served largely in his home country.
- Guantanamo officials accuse defense lawyers of creating security risks by providing clients news of the outside world and by gathering information for journalists. The officials propose various restrictions, such as monitoring attorney-client mail and denying lawyers access to some evidence.
- Commander Diaz's court-martial begins in Norfolk, Va.

SOURCES: Dallas Morning News research; news reports

Bush administration officials have characterized the Guantánamo population overall as "the worst of the worst."

That is one of "two misstatements, or false statements, that occurred about Guantánamo," Cmdr. Diaz said. "The other statement was 'We do not torture.' "

One of his jobs at Guantánamo, he said, was to track and investigate allegations of abuse.

"I think a good case could be made for allegations of war crimes, policies that were war crimes," he said. "There was a way to do this properly, and we're not doing it properly."

Father on death row

If he ends up in prison, Cmdr. Diaz, in a sense, will be joining his father. Robert Diaz, a former nurse, has been on California's death row since 1984, convicted of killing 12 patients under his care at rural hospitals.

The elder Mr. Diaz had no prior record and has always maintained his innocence. According to news reports, he faced a largely circumstantial case with questionable medical evidence and an ill-equipped public defender who talked him into a nonjury trial – an extremely unusual tactic in a capital punishment case.

He "never received anything even close to a fair trial," a 1994 *San Francisco Chronicle* investigation concluded.

"My daughter is 15," Cmdr. Diaz said. "She's pretty much in the same position I was when I observed this happen with my dad – just observing the injustice."

None of that, however, dims "my love of country and love of the law and the Constitution and the founding principles of this country," Cmdr. Diaz said. "That forms the core of who I am."